

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VICTOR FERREIRA-ROSARIO,

Petitioner,

- against -

ORDER

19 Civ. 3175 (NRB)

18 Cr. 173-7 (NRB)

UNITED STATES OF AMERICA,

Respondent.

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NAOMI REICE BUCHWALD

UNITED STATES DISTRICT JUDGE

WHEREAS, in his petition to vacate his sentence pursuant to 28 U.S.C. § 2255, petitioner raises a claim of ineffective assistance of counsel for failure to file an appeal; and

WHEREAS, on September 2, 2020, the Court ordered a briefing schedule regarding the petition; and

WHEREAS, based on the briefing, the Court has determined that petitioner's claim of ineffective assistance of counsel for failure to file an appeal would benefit from additional factual development; and

WHEREAS, in basing his petition on ineffective assistance of counsel, Petitioner has waived the attorney-client privilege as a matter of law; and

WHEREAS the Court is cognizant that, absent court order, ethical concerns may inhibit Counsel from disclosing confidential information relating to a prior client even in the absence of a

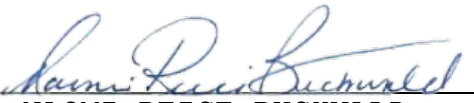
privilege, see, e.g., ABA Standing Comm. on Ethics and Prof. Responsibility Formal Op. 10-456 (July, 14, 2010), Disclosure of Information to Prosecutor When Lawyer's Former Client Brings Ineffective Assistance of Counsel Claim; is hereby

ORDERED that petitioner's former counsel, Pedro Batalla, shall give sworn testimony in the form of an affidavit by January 4, 2021 addressing his conversations with petitioner regarding a potential appeal of petitioner's conviction and sentencing and stating whether petitioner expressly directed counsel to file a timely appeal on his behalf; and it is further

ORDERED that any additional briefing that the parties wish to submit in light of that affidavit shall be filed by February 5, 2021.

SO ORDERED.

Dated: New York, New York
December 10, 2020



NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

A copy of the foregoing has been mailed to:

Victor Ferreira-Rosario, ID No. 85505-054
MOSHANNON VALLEY CORRECTIONAL INSTITUTION
555 GEO DRIVE
PHILIPSBURG, PA 16866